MINOR-VARIANCES AND NON-CONFORMING USES—

COMMITTEE OF ADJUSTMENT GUIDELINES

Ontario
Ministry of Housing

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COMMITTEE OF ADJUSTMENT GUIDELINES

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Prepared by Operations & Development Control Branch

Ontario

Ministry of
Housing

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These guidelines have been prepared to assist committees of adjustment and their secretary-treasurers in processing applications made under sections 42(1) and (2) of The Planning Act. While it is hoped this booklet will provide useful information, it is not intended to provide legal advice. Committees should consult their solicitor on all legal matters.

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A NOTE ON METRIC CONVERSION

The Government of Ontario is committed to a program of metric conversion. The Ministry of Housing issued Guidelines for Metric Conversion of Planning Documents in 1977. This booklet outlines when and how planning documents should be converted to metric terms. (It is available at $0.50 per copy, payable to the Treasurer of Ontario from The Publication Centre, Ministry of Government Services, 880 Bay Street, 5th Floor, Toronto, Ontario. M5S 1Z8).

In keeping with this goal of metric conversion, metric units are used in this document. The conversion has been done from imperial to metric units using the method contained in the Guidelines. The imperial units are indicated in brackets.

The Ministry of Housing has established the following target dates for metric conversion:

July 1, 1978 - the following should be in metric terms:

- plans of subdivision
- new official plan submissions
- new municipal by-laws passed
- land transactions requiring a new survey (i.e. consents)
- other planning documents

July 1, 1979 - . approved official plans converted to metric terms

December 31, 1979 - . municipalities to complete their conversion of approved zoning by-laws

It is recommended that committees of adjustment keep the proposed conversion dates in mind and convert to metric terms accordingly. If, in a specific instance, undue hardship is involved, imperial units will still be permissible for a limited time.

I. THE LEGAL FRAMEWORK

1.1. ZONING

1.1.1 Zoning - What is it?

Community planning is basically a two function process:

- policy making
- implementation

The policies are the framework against which the day-to-day development decisions are made. These policies are usually contained in a policy document called the official plan. In Ontario, one of the main components of the implementation system is zoning.

statutory provisions

In accordance with section 35 of The Planning Act, municipal councils can pass zoning by-laws. Zoning by-laws control land use and may set standards. They determine where and how development may take place. If zoning is in effect, a land development proposal must conform to the requirements of the zoning by-law or a building permit will not be issued.

Zoning is not mandatory in Ontario. Some areas have no zoning controls to regulate where development may take place. There may be no controls aside from the Ontario Building Code. The Code establishes construction standards. A property owner can get a building permit for any use in any location, provided he meets the standards set out in the Building Code and any other laws in effect.

importance of zoning

A property owner must meet the requirements of the zoning by-law precisely. One function

of zoning is to protect property values by defining in exact terms, through a public document, what standards a property owner must meet to develop land. If these standards are not met, the property owner can be prosecuted.

preciseness of zoning

A prominent characteristic of zoning is that it is precise. Its standards are exact. No leeway is permitted. Suppose a property owner has a lot with a 17 metre (55') frontage and the by-law requires a minimum frontage of 18 metres (60') for a single-family residence. The building inspector*cannot say "Well, you've got 17 metres, it's close enough". No building permit can be issued unless the proposal complies with the terms of the by-law exactly.

the importance of a well-drafted by-law

The drafting of the by-law is important. A zoning by-law should be drafted with both an understanding of the area it affects and a concern for the welfare of the residents.

For example, the by-law may require a minimum frontage of 18 metres for single-family residences. Yet there may be a large number of existing lots with 17 metre frontages. The building inspector will have trouble administering this by-law. Most lots will not meet the 18 metre standard and the building inspector will not be able to issue a building permit.

In this particular situation, research into

* The term building inspector is used throughout this document. It is intended to mean the individual who approves applications for building permits.

the existing lot pattern before the by-law was drafted, would have prevented the problem. The municipality has both sanitary sewers and piped water. A 17 metre minimum requirement would have eased the administrative problems the 18 metre standard creates. It would not have resulted in any adverse health problems because the municipality has full services.

1.1.2 Amendment to the Zoning By-law

No matter how much foresight is used and no matter how well the by-law is drafted, it will not suit every situation. Some proposals will not comply to the requirements of the by-law. By-laws, however, can be changed.

For example, Mr. A owns a lot that is presently zoned R1, permitting a single-family residence on a 464.5 square metre (5,000 sq. ft.) lot. His lot has 697 square metres (8,000 sq. ft.) and he wants to build a duplex. The official plan permits both single-family and duplexes in his neighbourhood. He cannot get a building permit for a duplex in the R1 zone. He must apply for a by-law amendment to change the R1 zoning to R2. The R2 zone permits duplexes on 697 square metre lots.

This change to the by-law is called an amendment. Municipal council passes the amendment and, like all zoning by-laws, the Ontario Municipal Board must approve it before it comes into force.

1.2 MINOR VARIANCES

1.2.1 Minor Variances and The Committee of Adjustment

Sections 41 and 42 of The Planning Act establish a procedure for dealing with minor changes to a zoning by-law that do not necessarily need a by-law amendment. Section 41 allows a municipal council to appoint a committee of adjustment to consider such changes.

origin of the term

The term "committee of adjustment" comes from the committee's role of adjusting by-law requirements in special circumstances.

variances from zoning by-laws

A committee of adjustment can grant a minor variance from any by-law that implements an official plan or from a zoning by-law passed under section 35 of The Planning Act. In actual fact, committees usually grant minor variances from zoning by-laws only. These zoning by-laws may implement an official plan but they may be adopted when no official plan exists.

1.2.2 A Minor Variance - What is it?

Suppose Mr. A gets his rezoning to allow a duplex on his 697 square metre (8,000 sq.ft.) lot. He then begins more detailed planning for the siting of the building only to find that he cannot locate his building to meet the front yard requirement of the by-law.

As figure 1 illustrates, there is a stream running along the rear lot line of his property. He must locate his proposed dwell-

ing a minimum of 7.5 metres (25') from that stream.

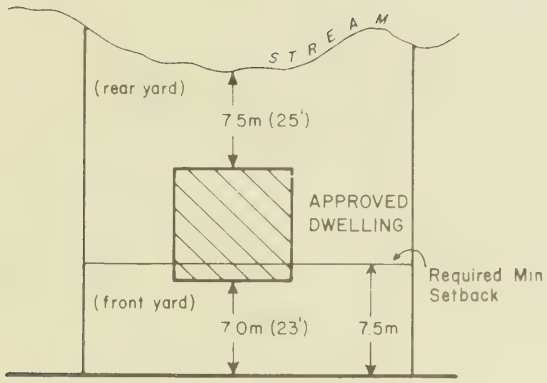


Fig 1

To do so he cannot meet the front yard setback requirement of 7.5 metres from the street line. He still finds himself unable to get a building permit because he cannot meet all the by-law requirements. He has the 697 sq. metres but he cannot provide the 7.5 metre setback requirement from the street because of the topography.

Fig. 2

Another example is shown in figure 2. In this case, because of the shape of the lot, the proposed dwelling encroaches slightly on the required minimum side yard of 2 metres (6'). Because the owner cannot meet the 2 metre requirement, he cannot get a building permit.

In both these situations the property owner could apply to municipal council for a by-law amendment. The by-law amendment process, however, can be long and costly. It is for situations such as these that the minor variance process was developed.

A minor variance is really a minor change to the by-law for one specific application. It is a change created by circumstances peculiar to the property that prevent the owner from meeting all the requirements of the by-law. A minor variance approval is a certificate of permission, because it allows the property owner to get a building permit even though his proposal does not comply exactly to the by-law's requirements.

type of provisions varied

Committees can vary by-law provisions relating to the land, building, or structure or the use thereof. Consequently, quite a number of zoning by-law provisions may be the subject of a minor variance application. For example, owner A, as shown in figure 3 may wish to erect an office building. According to the by-law requirements, owner A must provide 8 off-street parking spaces.

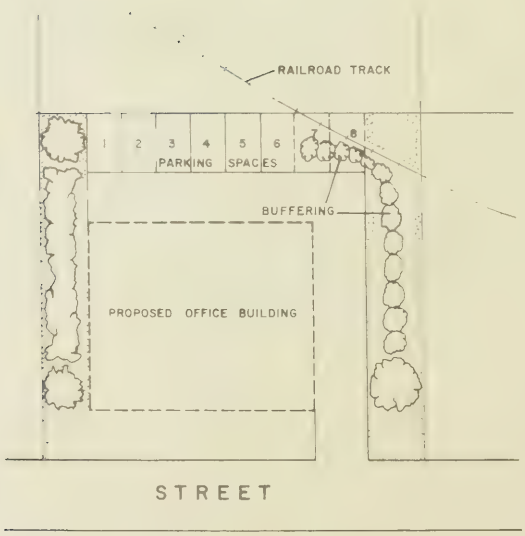


Fig. 3

Because of the railroad track cutting off the corner of his property, he can provide only 6 spaces. He, therefore, can apply to the committee of adjustment for a minor variance for his specific proposal from the by-law's parking requirement of 8 spaces to 6.

Zoning by-laws can also establish standards for external design. Suppose the by-law requires that a gable roof line be used on all duplex dwellings. A particular owner wants to erect a building with a flat roof. In such a circumstance he may wish to apply to the committee of adjustment for a variance for his specific proposal from the provisions of the by-law.

advantage of having a committee of adjustment

It is not mandatory to appoint a committee of adjustment. Municipal council can pass by-law amendments for every proposal that does not comply to the by-law. There is, however, an advantage to having a separate body who has responsibility for reviewing minor variances from the by-law provisions.

Municipal council has many responsibilities. As a result, council may not be able to devote the time necessary to evaluate these applications. There is the danger that if council dealt with these minor changes on a continuing basis, there might be a tendency to approve all amendments because they appear so small and insignificant. Variances from zoning by-laws can create problems; so it is important to allocate enough time for considering each application. A separate body, appointed to consider such applications, can afford to take its time in assessing all aspects of a proposal.

1.3 NON-CONFORMING USES

1.3.1 A Non-conforming Use - What is it?

In addition to its powers to grant minor variances, a committee of adjustment also has jurisdiction over non-conforming uses. A non-conforming use is an existing use not recognized in the zoning by-law.

By way of example, suppose that the municipality's official plan (council's statement of long range planning policy) states that a certain neighbourhood should, in the long run, be exclusively multiple family residential. At present, the area contains a number of different uses. One of these is a 20 year old tire factory. The municipality passes a zoning by-law to implement that official plan. It zones the entire neighbourhood RM2 (multiple family residential). The tire factory is a non-conforming use. It does not comply with the by-law.

statutory provisions

Because of provisions in The Planning Act, this tire factory can continue to exist despite the fact that it is not a residential use and does not comply with the by-law requirements. Section 35(7) of The Planning Act protects any land, building or structure that was used for a purpose prohibited by the by-law on the day the by-law was passed. There are, however, two important provisos.

legally constructed

First of all, the non-conforming use must be there legally. That means that it must comply to the regulations that were in effect when the

use began. The building permit should have been obtained legally.

continuous use

Secondly, the non-conforming use must be continuous. A non-conforming use cannot shut down and reopen at will. A regular seasonal closing is not included. Once it closes down it loses its non-conforming use status and cannot reopen. The non-conforming use ceases to exist and any further use must comply with the by-law standards.

For example, the owner of the tire factory cannot close down his factory for an extended period of time and then simply reopen it. If he does so, the factory becomes an illegal non-conforming use. Since it does not comply with the by-law, the municipality can take legal action against the owner.

1.3.2 Non-conforming Uses & the Committee of Adjustment

A non-conforming use should cease to exist in the long run and be replaced by a use that conforms to the zoning by-law and the official plan where there is one. Despite this aim, Provincial legislation recognizes that non-conforming uses should be given some concessions even though they do not comply with the municipality's long term plans. Consequently, section 42(2) of The Planning Act gives committees of adjustment some additional powers regarding the expansion and change of use of non-conforming uses.

discretionary approval

First of all, these powers are discretionary.

A non-conforming use does not have the right to expand or to change its use. Such permission is a privilege. These approvals are not granted as a matter of course. Each application must be assessed on its own merits before the committee decides whether or not to grant permission. Simply because the tire factory wants to expand, does not mean it will receive permission, as a matter of course, to do so.

expansions

Suppose the tire factory wants to enlarge. It cannot get a building permit to do so since it is not recognized as a permitted use in the by-law. Section 42(2)(a)(i) of The Planning Act sets conditions for a committee of adjustment to consider the enlargement of legal non-conforming uses.

on property originally owned only

The expansion can take place with the committee's approval, provided it is within the limits of the land owned and used in connection with the tire operation on the day the by-law was passed. That means that the owner cannot decide to expand and then buy land for the expansion. He must already own that land.

no new separate building

He cannot erect any new, separate buildings. He can apply to the committee of adjustment to build an addition only. It must be remembered that the ultimate aim is for the non-conforming use to cease to exist and be replaced by a conforming one. A new and separate building would tend to perpetuate the use indefinitely and so it is not allowed.

change in use

In addition to approving expansions, the committee can also approve a change in use of a non-conforming use in accordance with section 42(2)(a)(ii) of The Planning Act. Perhaps the owner of the tire factory decides to sell the factory. He cannot find a purchaser to continue manufacturing tires. He is able to find one who manufactures rubber rafts. This is a similar but still non-conforming use. The owner must apply to the committee of adjustment for approval of this change.

similar or more compatible use

Sometimes the proposed use is not similar but rather more compatible. That is, it is more compatible with the uses permitted by the by-law and the eventual desired character of neighbourhood. Perhaps, the tire manufacturer finds a buyer who wants to use the building as a warehouse. The owner may apply to the committee stating that this would be more compatible because there would be no on-site manufacturing and traffic volumes for pick-ups and deliveries would be no greater than at present. It would be the committee's responsibility to decide if the change in use would or would not be more compatible with the ultimate, desired character of the neighbourhood.

expansion privileges after change in use

If this change in use is approved, the warehouse would be a legal non-conforming use but it loses its expansion privileges. The warehouse could not then, for example, apply to the committee for an addition. The legislation

states that to be eligible to apply for expansion approval, the present use must be the one that existed on the day the by-law was passed.

subsequent changes in use

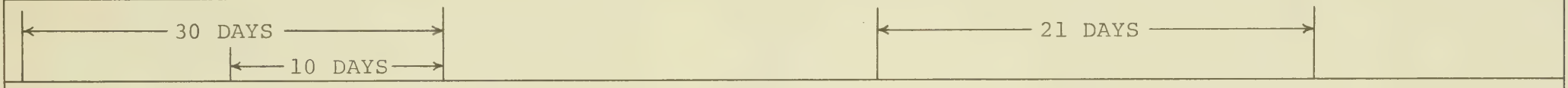
The owner can, however, apply to the committee for subsequent changes in use under section 42(2)(a)(ii) of The Planning Act. He can apply for as many changes as he wishes provided that each change will be similar to the non-conforming use or will be more compatible with the uses permitted by the by-law.

1.4 BY-LAW INTERPRETATION

Some by-laws, especially older ones, are written in general terms. They contain no list of specific permitted uses. Such a by-law may, for example, state that certain lands can be used for industrial purposes. It does not get any more detailed than that. The building inspector must decide whether a given proposal complies with the zoning by-law. i.e. Is it an industrial use?

In some cases, he may turn down a proposal because he is uncertain about its compliance to the by-law, or he may ask the property owner to apply to the committee of adjustment for an interpretation. The committee of adjustment will determine if the proposed use complies with the intent of the by-law. If the application is approved, then a building permit can be issued. (Section 42(2)(b) of The Planning Act).

APPLICATIONS MADE UNDER SECTIONS 42(1) AND 42(2) OF THE PLANNING ACT - CHRONOLOGY



Application Submitted	Notice of Hearing	Hearing	Decision-Making	Notice of Decision	Appeal	Final Decision
. application must be heard in 30 days. s.42(4)	. notice must go out 10 days before hearing (Rules)	. public hearing s.42(9)	. decision can be reserved s.42(7)	. specific people must be notified s.42(11)	. 21 days to appeal s.42(13)	. decision final if no appeal s.42(14)
. 30 day time period begins when application is complete (Rules)	. site visit	. quorum s.41(6)	. must be in writing, signed and contain reasons s.42(9)	. decision sent to Minister only on request by Minister s.42(11)(a)		. must notify applicant s.42(14)
		. application may be deferred s.42(7)	. can be conditional s.42(10)			. must file certified copy of Decision with clerk s.42(14)
		. secretary-treasurer takes minutes s.41(11)				. if appealed: after OMB decision must file copy of OMB order with clerk s.42(18)

Fig. 4

II. THE OPERATIONAL FRAMEWORK

2.1. INTRODUCTION

Committees of Adjustment operate within a framework that is formally established. That means that while each group is independent, there are uniform standards for their operation. Some of the requirements are set out in The Planning Act. The rest are in the "Rules of Procedure" prescribed by the Minister of Housing. The Minister is given the authority to establish such rules in section 41(12) of The Planning Act.

2.2 RECEIVING NEW APPLICATIONS

Between the time an application is received and the time the committee's decision is final, a number of events and considerations must take place. Figure 4 presents this information in chart form.

2.2.1. The Application Form

The required application form is set out in Form 1 of the Rules of Procedure. Each committee should have applications printed and available to individuals who request them. (See Appendix I)

All questions contained in Form 1 must be asked but additional ones can be added should the committee find that local circumstances warrant such action. Where the application involves a non-conforming use, questions 13 to 17 are very important. The secretary-treasurer should ensure that these questions are answered. This information is vital in determining if the existing use is a legal non-conforming use.

The Rules of Procedure define "Application":

> " 'application' shall mean an application in Form 1 in which the applicant has answered all the questions and provided all materials necessary for the processing of said application by the committee".

This definition is brought to your attention because it is very important. It implies that an application is not an application, until:

- all questions have been answered
- the sketch has been properly completed
- as many copies of the application as the secretary-treasurer considers necessary have been submitted. (This particular requirement is in the Rules and is there as a cost saving measure to cut down on expensive photocopying).
- all other materials have been submitted such as, for example, an owner's authorization.

hearing within 30 days

This definition is important because section 42(4) of The Planning Act states that the hearing of an "application" must be held within thirty days of the application being received by the secretary-treasurer. An application is not an "application" until it is complete, containing all the required information. Consequently, the 30-day period starts when the application is complete.

2.2.2 The Sketch Map

The Rules of Procedure state that the

applicant must attach a copy of the sketch map to each copy of the application submitted.

Importance of good sketch maps

A committee is shortchanging itself by not insisting on a clear and complete sketch map. A good sketch map does not necessarily mean one prepared and signed by an Ontario Land Surveyor. The Rules of Procedure do state that a committee may set this requirement. It is expensive to have this work done, especially when the application may be refused.

Minor variance and non-conforming use applications involve situations where accuracy of measurement can be important. Suppose the application is for a variance from the 2.5 metre (8') side yard requirement. The applicant's building will encroach 0.6 metres (2') into that side yard. He applies for a 0.6 metre variance using a sketch map. It is approved but when he gets the actual survey done he finds he will encroach 0.7 metres (2'3"). In this case, he still will not be able to get a building permit. His minor variance was for 0.6 metres. It was not for 0.7 metres. He will have to reapply to the committee for another variance. A lot of time and expense could have been saved if the property was surveyed in the first place and an accurate application made to the committee.

Consequently, while a sketch map such as the one shown in figure 5 will be adequate in many cases, there are some instances where an accurate survey is preferable.

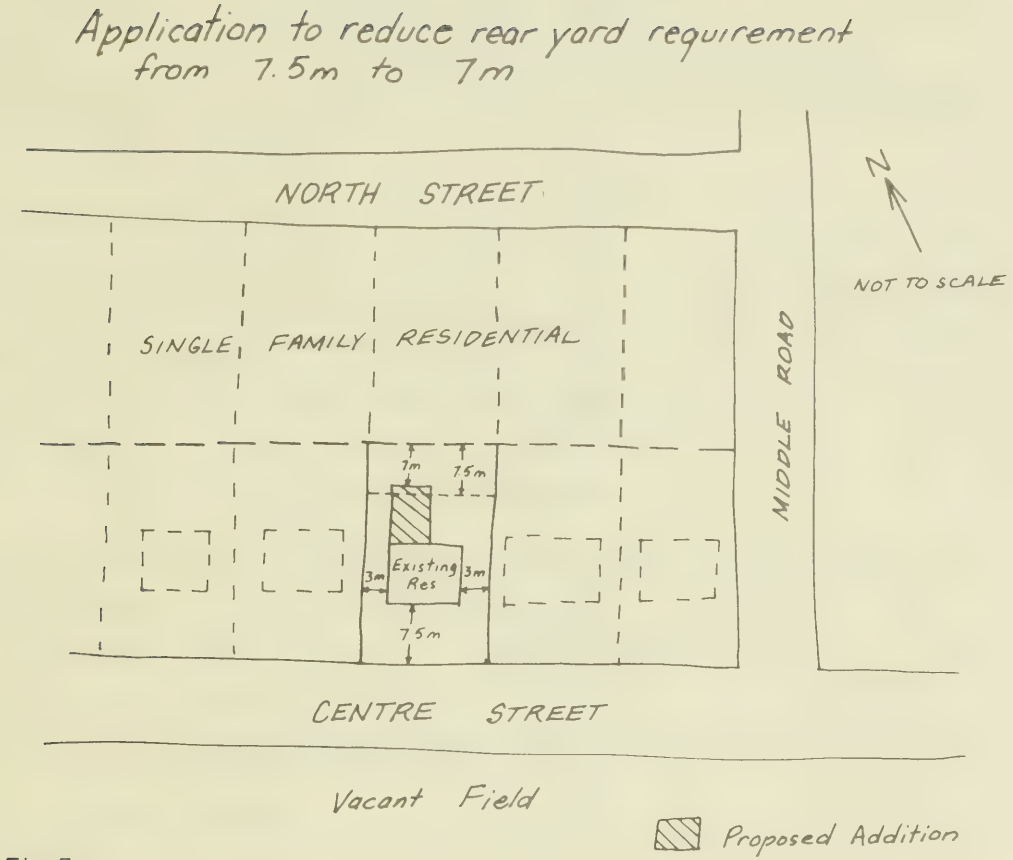


Fig. 5

2.2.3 The Filing and Record System

technical requirements

There are several requirements for filing and record keeping. First of all, section 41(11) of The Planning Act states that the secretary-treasurer must keep minutes and records of all applications and official business of the committee. In addition, the Rules of Procedure elaborate on this requirement, giving specific instructions:

1. The secretary-treasurer must note the date of receipt on each copy of the application. The date in such visible form, makes it clear when the 30-day time limit for the hearing begins.

submission numbering

2. The Rules of Procedure require committees to use a specific numbering system for submission of minor variance and non-conforming use applications. Submissions must be prefixed with the letter "A" and numbered consecutively, beginning with "1" at the beginning of each calendar year, followed by an oblique stroke and the last two digits of the year. For example, A15/78 refers to the 15th submission in the year 1978.

   Committees can also use other numbering systems for in-office filing purposes. However, all committees must use the numbering system prescribed in the Rules of Procedure for submission purposes.

organizational aids

3. The rest of the record keeping depends on the size of the committee's operation. There are no prescribed rules, it is up to the committee to decide on what is appropriate. Here are some ideas that may be adaptable to your group's circumstances:

separate file folder

   (a) It is helpful to have a separate file folder for each application. Papers should be clipped inside so they will not be lost.

   (b) If your volume of applications is heavy, you may need an index to your applications, similar to the one shown in Appendix II. Such an index is handy for telephone calls or to check for duplicate applications.

summary sheet

   (c) You may decide on a summary sheet to be kept at the front of each application. It is again helpful for telephone calls. But it does require

work to keep it up and if your committee is a small one, it may not be worthwhile. (See Appendix III for a sample summary sheet).

2.2.4 Fees

An application fee may be charged to offset the cost of operating the committee. The maximum fee permitted under current legislation is $50.00 The provision is found in section 42(6) of The Planning Act.

2.3 PRELIMINARY APPRAISAL

2.3.1 The Notice of Hearing and Circulation

Section 42(5) of The Planning Act states that it is up to the committee to decide how notice of a hearing should be given. The Rules of Procedure are more specific:

time limit for written notice

The secretary-treasurer is responsible for the required notice. It must be a written notice containing the time and place of the hearing. It must also contain a brief summary of the proposal. It can be delivered personally or mailed. It must go out 10 days (not 10 working days) before the hearing.

The applicant must, of course, be notified. In addition, the secretary-treasurer must notify a number of other people. Since the Rules of Procedure are quite explicit on who must be notified, that information will not be repeated in its entirety.

circulation distances

It is important, however, to note a few things. First of all, all assessed owners located within 60 metres of the property affected by the application must be notified. If there is some concern about how that

60 metres is calculated, the secretary-treasurer should contact the municipal clerk. The clerk must follow a similar procedure in circulating zoning by-laws passed by Council.

optional additional notice

In some cases the committee may feel that additional notice is warranted. Perhaps the committee is assessing an application for an extension to a non-conforming use. This use has been a controversial one because of past noise problems. The committee, therefore, feels that people further away than 60 metres will be affected. In such a circumstance, section 5 of the Rules allows the committee to decide on the publication of additional notice.

Notice to condominium residents

Where the application affects a condominium development, all assessed owners need not be notified. Instead, notice is given to each member of the Board of Directors of the condominium corporation.

reducing the extent of notice

Also, if the land is already zoned for either single family, semi-detached, or duplex residential development, the committee of adjustment can decide to reduce the extent of the notice to 30 metres for minor variance applications. This last provision is optional.

2.3.2 The Site Visit

Although neither The Planning Act nor the Rules of Procedure set any requirements for site visits, it is recommended that such visits be made whenever possible. This is especially true for minor variance applications.

The impact of an addition on the adjacent uses can best be assessed by visiting the site directly. The proposed extension may look of little consequence on the sketch. Maybe the residences are very close together and this addition will mean a loss of light and privacy to the rear yard neighbour. Aspects such as these can best be evaluated by an actual on-site inspection. It may be beneficial to include slides or photographs as part of the site visit report.

2.4 THE HEARING

2.4.1 The Technical Requirements

There are several technical requirements prescribed by The Planning Act and the Rules of Procedure that must be adhered to. In summary, they are:

30 day time limit on hearing

a. The application must be heard within 30 days of its receipt. (Section 42(4) of The Planning Act). The definition of an application and a discussion of when the 30 days begins have already been discussed in section 2.2.1, page 13.

deferring the hearing

It is important to note, however, that even though the application must be heard, a decision need not be made. If the committee does not have full information and needs more time to obtain it, it may adjourn the hearing, deferring a decision on the application. (Section 42(7)).

deferred applications and further notice

b. If the application is deferred, the Rules of Procedure state how notice of the next hearing is to be given. If the chairman of the committee knows the time and place, he should announce it publicly at the meeting. If it is yet to be determined, he should clearly state that the secretary-treasurer will notify those who leave their names with him.

public hearing

c. The hearing must be public, i.e. any one who wishes to attend may do so. (Section 42 (7)). All information related to the application must be obtained in an open manner.

quorum

d. In a committee of 3 - 2 is a quorum; in a committee of more than 3, then 3 is a quorum. (Section 41(6)). And as long as there is a quorum, the committee can carry on even if a member cannot for some reason participate. (Section 41(7)).

oaths

e. Oaths are at the discretion of the chairman (Section 42(8)).

2.5 THE DECISION

2.5.1 Technical Requirements

reserving the decision

a. The committee does not have to make its decision at the hearing. The decision may be reserved. (Section 42(7)). In many cases, it is perhaps better to make the decision after giving some thought to the information presented at the hearing. A committee need not feel pressured to make a decision during

the hearing. In fact, the Ontario Municipal Board in conducting its hearings often reserves its decision.

written decision only

b. The decision must be made by a majority of the members hearing the application. It must be in writing, signed by the members who concur in the decision, and must include the reasons for the decision. (Section 42(9)). A sample decision is shown in Appendix IV.

A committee should give careful attention to the written reasons for its decision. The provision of sound, well-considered reasons will, in many instances, satisfy an applicant or other interested party, who otherwise, in the absence of such reasons, may be inclined to appeal the decision.

stating the reasons

Many decisions simply state that the application is approved because it maintains the intent of the zoning by-law (and the official plan) and is desirable for the appropriate development of the land. A more comprehensive decision would attempt to state how and why the intent is maintained.

For example, a proposed addition may encroach into the rear yard requirement of the by-law. The committee feels that because of the large size of the abutting lots, the proposal will not alter the character of the neighbourhood. The decision should include this information.

2.5.2 Conditions of Approval

The committee may set conditions and time

limits in its decision. (Section 42(10) of The Planning Act.)

Perhaps the committee has an application for an office building that will not have enough side yard to meet the by-law's requirements. The committee feels that the encroachment is minor but would like to ensure privacy for the adjacent uses. In this case, they can approve the application subject to a 2 metre (6') high wooden privacy fence being erected along that side of the property .

enforcement of conditions

There may be some concern about the enforcement of conditions. However, if the applicant fails to meet any of the conditions imposed by the committee, he no longer has valid permission. Once the validity of the committee's decision is dependent on the fulfillment of all conditions, enforcement is not a serious concern.

time limit to fulfill conditions

In any case, there are ways to help in the enforcement of conditions. One is to put a time limit on their fulfillment. In the previous example, the committee could specify that the fence must be built within six months.

agreements as a condition of approval

An additional method is the use of agreements. It is preferable for such agreements to be made between the property owner and the municipality since the municipality has certain powers to enforce such agreements.

2.5.3 Lapsing of Approval

Section 42(10) permits a committee to set a time limit on its approvals. If the

committee does not, then its approval does not lapse.

2.5.4 Notice of Decison

who is notified

The secretary-treasurer must mail certified copies of the committee's decision, indicating the last day for appealing to the Ontario Municipal Board, to those persons outlined in section 42(11) of The Planning Act and in the prescribed Rules of Procedure.

A copy goes to the applicant and any person who appeared at the hearing and gave the secretary-treasurer a written request for such notice. (Section 42(11)).

In the case of regions, all decisions go to the regional municipality unless the region has notified the committee by registered mail that the region no longer wishes to receive copies of the committee's decisions. (Rules of Procedure).

submission to the Minister of Housing

Besides the notice of decision, the Minister also receives a number of other documents. The content of a submission to the Minister is set out in section 42(12). This whole package of materials is needed to help in the review of the application. The decision goes to the Minister of Housing only if he has notified the committee by registered mail that he wishes to receive copies of their decisions. (Section 42(11)).

where no appeal lodged

The notice must contain the last date of appeal to the OMB. The decision of the committee becomes final and binding if,

after 21 days, no appeal of the decision to the Ontario Municipal Board has been made. (Section 42(14)). The secretary-treasurer should wait 2 or 3 days beyond the appeal period for receipt of any appeals delayed by slow mail delivery but made within the prescribed 21 days. If no appeals have been made, the secretary-treasurer must then notify the applicant and file a certified copy of the decision with the clerk of the municipality.

2.6 THE STATUTORY POWERS PROCEDURE ACT.

In addition to The Planning Act, committees of adjustment are also subject to the requirements of The Statutory Powers Procedure Act, 1971. This Act came into force in 1972 and sets certain rules for hearings, the outcome of which may affect the legal rights of individuals. It formalizes certain principles of natural justice to ensure hearings are fairly conducted. Committees of adjustment are subject to those rules.

Secretary-treasurers should become familiar with this Act. Copies are available by mail through:

The Publication Centre
Ministry of Government Services
880 Bay Street, 5th floor
Toronto, Ontario.
M5S 1Z8

The price is $1.75, payable in advance to the Treasurer of Ontario. (Printed in the same document as The Motor Vehicle Dealers Act).

The requirements of The Statutory Powers Procedure Act are, in certain ways, similar to the requirements for committees of adjustment under The Planning Act. To ensure the legality of a committee decision, the requirements of both Acts should be met. The following are some of the provisions of The Statutory Powers Procedure Act of relevance to a committee of adjustment. Where the same or similar provision is found in The Planning Act or the Rules of Procedure, this information is shown in brackets. For the exact requirements, reference should be made to the statutes themselves.

- Reasonable notice of hearing must be given (the Rules of Procedure for Committees of Adjustment state not less than 10 days).
- The notice of hearing must contain the time, place, and purpose of the hearing (the Rules of Procedure also contain this requirement).
- The notice of hearing must also contain a reference to the statutory authority under which the hearing is to be held which, in this case, is section 42(1) or 42(2) of The Planning Act.
- The notice of hearing must contain a statement that, if a party who is notified does not attend the hearing, the committee can proceed and the party is not entitled to any further notice.
- The hearing must be public (section 42(7) states that the hearing must be public).
- The decision must be in writing and should include reasons if the applicant

requests it (section 42(9) states that the decision must be in writing and include reasons).

. The decision must be mailed to all parties who took part in the hearing (section 42(11) prescribes to whom the notice must be sent).

2.7 APPEALS TO THE ONTARIO MUNICIPAL BOARD

2.7.1 Technical Requirements

who can appeal

Once the notice of decision has been sent out, then the decision of the committee may be appealed to the Ontario Municipal Board. The appeal may be lodged by the applicant, the Minister of Housing, the municipality or any other person who has an interest in the matter.

notice of appeal and fee

The notice of appeal must be delivered in person or sent by registered mail to the secretary-treasurer. The fee, prescribed by the Ontario Municipal Board, must be enclosed. At the present time, the appeal fee is $25 for each separate appeal.

21 day appeal period

The appeal must be lodged within 21 days after the notice of decision required under section 42(11) has been sent. Note that section 42(11) states that the notice of decision must contain the last date of appeal to the Ontario Municipal Board. The secretary-treasurer should wait 2 or 3 days beyond the appeal period for receipt of any appeals made within the prescribed 21 days but delayed by slow mail delivery.

Ontario
Ministry of Housing

Plans Administration Division

56 Wellesley St. West
8th Floor
Toronto, Ontario
M7A 2K4

March, 1978

Subject: Minor Variances and Non-Conforming Uses - Committee of Adjustment Guidelines

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(1) The procedural information contained in this publication is based on the new Rules of procedure scheduled to come into force on April 1, 1978. These Rules have not yet been finalized. When they are, each committee will be sent a copy. In the meantime, each committee should continue to use the present Rules.

(2) Page 35, Figure 7

The lot to be conveyed is shown on the right side of Figure 7.

(3) Appendices, page 5

Form 1, Question 22 has been deleted and Question 23 is now re-numbered Question 22.

2.7.2 Documents required by the Ontario Municipal Board

Section 42(13) of The Planning Act states that the Ontario Municipal Board can decide what papers and documents it requires to process an appeal. These Ontario Municipal Board Rules of Procedure on Appeals were issued June 30, 1975 and are included as Appendix V for your information.

2.7.3 The Ontario Municipal Board Hearing and Decision

The Ontario Municipal Board must notify the applicant, the secretary-treasurer, and the Minister of the hearing date. Any other notification is at their discretion.

The hearing itself is a hearing de novo. The Ontario Municipal Board is not judging the adequacy of the Committee's decision but rather is giving a whole new hearing. For that reason the committee does not have to defend its decision. Its involvement as an active participant at the hearing is minimal. The secretary-treasurer may be called upon to testify about certain procedural facts, but that is all.

If the decision of the Ontario Municipal Board is to approve an application the committee turned down, the applicant can proceed in accordance with the Board order.

If the Ontario Municipal Board turns down an application that was previously approved, the secretary-treasurer simply files a copy of the Board's order on the relevant file.

Finally, if the Ontario Municipal Board upholds the decision the committee initially made, the secretary-treasurer should proceed to finalize the file depending on the type of decision made by both the committee and the Board.

In all instances, the secretary-treasurer shall file a copy of the Board's order with the clerk of the affected municipality wherever applicable.

III. THE PLANNING FRAMEWORK

3.1 THE VALUE OF POLICY INFORMATION

A committee of adjustment with powers to consider applications made under sections 42(1) and 42(2) of The Planning Act has a highly specialized function. To do its job effectively, a committee should attempt to have as much information as possible at its disposal. Part of the background information that committee members should be aware of is the planning policies in effect for the municipality.

the official plan

The main planning policy document for a municipality is its official plan. It is the master land use plan for development during the planning period for the area that it covers. If the municipality does not have an official plan, it may have some type of interim land development policies. The committee should check with the municipal clerk's office to obtain copies of all policy documents. Committee members should acquaint themselves with the land use policy in effect for the municipality.

framework for consistent implementation decisions

While a committee of adjustment that considers minor variance and non-conforming use applications only, does not have to make detailed policy decisions, an understanding of the policy framework is still essential. The policy document provides a basis for decision-making. The policies establish the framework for consistent implementation decisions. If the policy states that neighbourhood A is to be a low density single family residential neighbourhood, then both the decisions of the municipal council and any

other land development agencies are expected to be in keeping with that policy - the committee of adjustment included.

3.2 EVALUATING MINOR VARIANCE APPLICATIONS

Committees of adjustment considering minor variance applications have very few statutory provisions to guide their assessment of a minor variance proposal. Section 42(1) of The Planning Act states that the requested variance should:

- maintain the general intent and purpose of the zoning by-law;
- maintain the intent of the official plan if any;
- be desirable for the appropriate development or use of the land.

3.2.1 Maintaining the Intent of The Zoning By-law

Committee decisions should maintain the intent of the zoning by-law. Standards in zoning by-laws are not arbitrary. They are established for specific reasons. Committees of adjustment alter these standards through their decisions. It is, therefore, important for committee members to have an understanding of why these standards were enacted in the first place.

For example, suppose the committee is assessing a proposal to reduce the side yard requirement of a residential lot. The committee must, first of all, determine what the intent of the by-law is in establishing the side yard requirement.

One possible reason is visual amenity. Spacing between houses is more attractive than houses crowded together. It also provides separation for privacy, freedom from sun shadows, fire protection, and access to the rear yard. The committee must decide whether the variance applied for will compromise the reasons why a side yard is required. If the committee feels that the reduction would not be within the intent of the by-law, the application will be refused.

3.2.2 Maintaining the Intent of the Official Plan

Committee decisions should maintain the policy directions established in the official plan. This is especially important where the variance is to a by-law that does not implement the official plan.

Perhaps the municipality has had a zoning by-law for a number of years. More recently a new official plan has been prepared and approved. That official plan has not been implemented by a new zoning by-law. As a result, building permits are issued in accordance with the standards and uses in the old by-law.

Suppose, as shown in figure 6, an individual wishes to build a shopping centre on B street but cannot meet the minimum setback requirement in the zoning by-law of 7.5 metres (25'). He applies to the committee of adjustment for a variance to permit a reduction of the

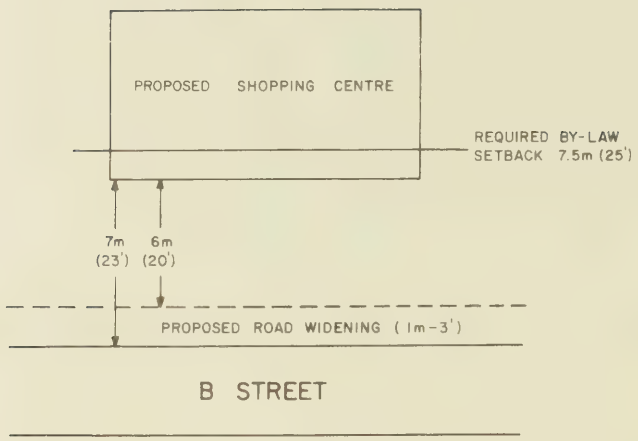

Fig. 6

setback requirement for this specific proposal to 7.0 metres (23'). The committee, in reviewing this application, notes that it is an official plan policy to eventually widen B street by 1 metre (3') and so even more of the setback would be eliminated. The eventual setback would be 6 metres (20'). In this case to grant minor variance would not be in keeping with the intent of the official plan.

3.2.3 Desirable Development and Use of Land

The Planning Act states that the minor variance should be desirable for the appropriate development or use of the land. The issue of desirability is highly complex.

One aspect is the effect of the minor variance on adjacent neighbours. For example, if the application is to reduce the required number of parking spaces for a specific proposal, it could result in more on-street parking and a problem for the adjacent property owners. The committee should assess this aspect of the

proposal before making its decision.

This question of desirability can be more general. Is it desirable to allow this minor variance from the point of view of its impact on the municipality as a whole? Minor variances should not set precedents. The approval should vary the provisions of the by-law because of a hardship situation created by the problems on one lot.

For example, suppose the committee approves an application for two semi-detached dwelling units on a lot with a 21.5 metre (70') frontage. The approved by-law standard is 24.5 metres (80'). If this were a situation where one 21.5 metre lot happened to exist in the middle of a built-up neighbourhood, then the committee might be justified in granting this variance.

On the other hand, suppose this 21.5 metre lot is located in an area of many 21.5 metre lots that could be similarly developed. In such circumstances, if the committee were to grant several minor variances for semi-detached dwellings on 21.5 metre lots, it would be tampering with the intent of the by-law. Council has established an approved standard of 24.5 metres. The committee of adjustment is altering council's approved policy by permitting several variances from that standard.

If the by-law was poorly drafted and does not recognize the municipality's large number of 21.5 metre wide lots that could be successfully developed with semi-detached residences then the zoning by-law may have to be amended

to make it more realistic. The final decision on whether or not the by-law should be changed must be made by council. If the committee, in the course of carrying out its duties identifies such a problem, it should direct council's attention to it. The committee should not, however, attempt to correct zoning by-law oversights through its decisions.

3.2.4 Minor Variance then Consent .... or vice versa?

Should the minor variance approval precede the consent or should the consent approval come first? There is no hard and fast rule. Committees should, however, be aware that consent approval can be made conditional on the minor variance being obtained.

For example, as shown in figure 7, owner A has a large lot and wants to sell half of it for a single family residence.

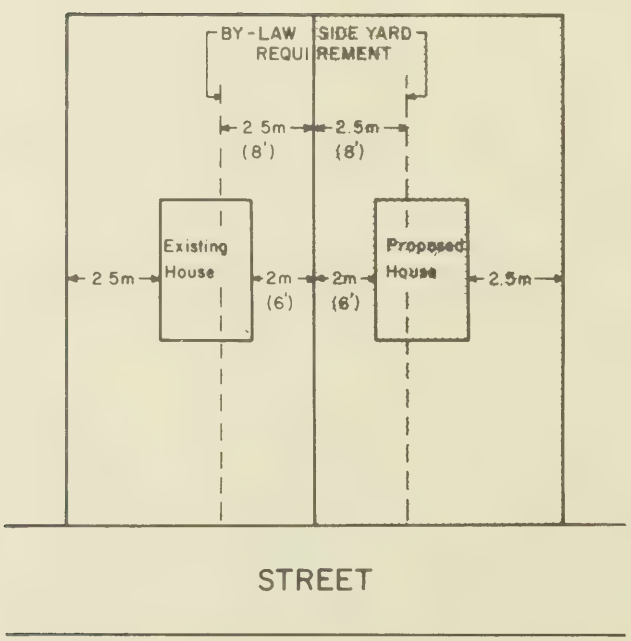

Fig. 7

To Be Conveyed

The official plan designates the area for residential development. The zoning by-law zones it for single-family residential use. There is one problem. Both lots will not meet the required side yard requirement of 2.5 metres (8'). How should this situation be handled?

If both the consent and variance are handled by the same committee, then both applications can be considered together, simplifying the situation. On the other hand, if the proposal is located in a municipality where consent is handled by a land division committee, the land division committee could make its approval conditional upon the local committee of adjustment making a decision on the minor variance being approved. The committee of adjustment can then consider the minor variance application.

In this situation it is important for the committee not to grant the minor variance simply because the consent has been granted. The application should be evaluated objectively. If there is a feeling that the minor variance is not in keeping with the intent of the by-law, then the minor variance should not be approved. Since the condition for the consent has not been fulfilled, the consent decision cannot be finalized and the proposed lot referred to in the example cannot be sold.

3.2.5 Minor Variances from Proposed By-laws

A municipality can appoint a committee of adjustment once it has passed a by-law under Section 35 of The Planning Act. It may take some time for that by-law to be approved by the OMB. In the interim the committee may be asked to deal with some minor variance applications. The problem is that the by-law approved by the OMB can vary substantially from that submitted for approval.

To avoid this problem, it is recommended that a committee of adjustment should not be established until the municipality's zoning by-law receives Ontario Municipal Board approval.

3.2.6 Minor Variance or By-law Amendment - A Question of Jurisdiction

The term minor variance has been left deliberately undefined. There is no definition as to what constitutes a minor variance and what does not. In each specific situation, the actual on-ground circumstance determines whether or not the variance is minor.

A minor variance cannot be mathematically calculated. The same variance may be minor in one situation and "major" in another. For example, a property owner may wish to construct an addition to his residence. The addition will encroach 1 metre (3') into the rear yard setback requirement of 7.5 metres (25'). Suppose, the residence is a single family dwelling and the addition is for a main floor laundry room. There are no objecting neighbours.

On the other hand, imagine a situation where an addition which will encroach the same 1 metre but is for a self-contained apartment unit to house a second family. There are objecting neighbours who are concerned about parking and the setting of a precedent for similar conversions. In these two cases, the requested variances are identical mathematically, yet the second one would have considerably greater impact on the surrounding uses.

It is the committee's responsibility to determine if a by-law amendment is necessary or whether the proposal can be dealt with through the minor variance procedure.

3.2.7 The Minor Variance As a Special Privilege

A minor variance is a special privilege. It is a method to reduce the inflexibility of the zoning by-law, so that undue hardship does not result. There should, however, be a valid reason why the by-law requirements cannot be met.

If a property owner has no way of providing that additional off-street parking the by-law requires, his land should not necessarily be prevented from developing. That is, provided of course, that no problems will result from reducing that requirement. On the other hand, if he can change his proposal in some way, perhaps by making his building smaller, then the minor variance should not be granted.

Suppose that a property owner requests a minor variance because it would be cheaper for him to build if he got a minor variance. He is required, for example, to provide a 6 metre (20') wide buffer between his use and the adjacent use. He wishes to reduce this buffer to 3 metres (10') so that he can maximize the buildable area of the lot. This is not a legitimate request for a minor variance. If he wants to, the applicant can meet the terms of the by-law.

It is also not the function of the committee to legalize by-law contraventions. A property owner, either deliberately or through ignorance, may put in a foundation too close to the rear lot line. He may then apply to the committee for a minor variance. The committee should not grant the variance simply because the building is already there. The application should be evaluated as if the building were a new use and if it cannot be justified, it should not be approved.

3.3 EVALUATING APPLICATIONS INVOLVING NON-CONFORMING USES

The legislation contains few requirements for assessing applications involving non-conforming uses. There are, however, certain principles a committee should follow in assessing such applications.

First of all, the basic principle behind these powers is to prevent undue hardship to uses established prior to the by-law being passed. Even though a particular use does not meet the long term planning objectives of the municipality, it should not be penalized unduly.

3.3.1 Determining Whether the Use is Legal Non-Conforming

The committee's first task is to determine whether or not the application is for a legal non-conforming use. The application form has specific questions to aid the committee in establishing the nature of the use. Question 14 asks for the construction dates of the existing buildings. Question 17 asks

how long the present uses have been on the site. The use is legal non-conforming only if:

- the building was constructed in accordance with all the regulations in effect when the building permit was issued.
- the present use is the same use that was used for a purpose prohibited by the by-law the day the zoning-by-law was passed.
- the use has been continuous.

For more information on non-conforming uses see Section 1.3, pages 8-12.

3.3.2 Maintaining the Intent of the Zoning By-law

Once the legitimacy of the application is established, committee members must evaluate certain aspects of the proposal. In doing so, the committee members must remember that in the long run the use should cease to exist. That is why no new separate buildings can be constructed. It is at this point that committee members may wish to look at the official plan to get an idea of what the municipality's long range goals are for the area.

In reviewing an application involving a non-conforming use, the committee should keep the municipality's zoning by-law in mind. In most cases, that by-law will contain standards for that type of use. For example, suppose the non-conforming use is a commercial building. The zoning by-law does not permit commercial uses in this location. It does, however,

contain standards for commercial development.

Even though the use is non-conforming, it should still be subject to the by-law standards for commercial uses. If the by-law has requirements about accesses or buffering of commercial uses, the committee should try to apply them to the site. This can be done through the use of conditions as discussed in Sections 3.4 and 2.5.2.

3.3.3 Determining Whether the Use is Similar or more Compatible

When the committee is evaluating an application for a change to a similar or more compatible use, the committee must ensure that the proposed use is in fact similar or more compatible. Committee members should determine, for example,

- traffic volumes
- parking requirements
- hours of operation
- noise

of the proposed change and how it compares to the existing use. The committee should also look at the official plan to determine what the eventual, desired character of the neighbourhood will be.

3.4 THE USE OF CONDITIONS

The committee does not have to approve the application as submitted. Section 42(10) allows a committee to set conditions. If the committee can improve an application through the use of conditions it should do so. Section 2.5.2., page 22 discusses this required aspect in more detail.

3.5 CONFLICT OF INTEREST

In most cases, the committee's jurisdiction is over a small area and committee members live in the locality. Almost inevitably, a matter will come before the committee where a committee member is involved. The matter may involve a relative or perhaps a business transaction.

In such cases, it is suggested that the affected member should not take part in the committee's discussion or vote on the decision. Provided that a quorum exists, the inability of a member to vote does not impair the committee's powers.

IV. ADDITIONAL INFORMATION

4.1 THE PLANNING ACT

This and other Government publications are available by mail from:

The Publication Centre,
Ministry of Government Services,
880 Bay Street, 5th Floor,
Toronto, Ontario. M5S 1Z8

The price of The Planning Act is $1.00, payable in advance to the Treasurer of Ontario.

4.2 COMMUNITY PLANNING ADVISORY BRANCH - MINISTRY OF HOUSING

The Community Planning Advisory Branch of the Ministry of Housing has field offices all over Ontario. There are Ministry staff to assist you should you have questions or problems.

Please feel free to contact the offices listed below:

Central Region
2nd Floor
47 Sheppard Avenue East
Toronto
M2N 2Z8 (416/226-1855)

South East Region
3rd Floor
244 Rideau Street
Ottawa
K1N 5Y3 (613/233-9301)

North East Region
758 La Salle Blvd. West
Sudbury
P3A 4V4 (705/560-0120)

South West Region
7th Floor
495 Richmond Street
London
M6A 5A9 (519/673-1611)

North West Region
435 James Street South
Thunder Bay
P7C 5G6 (807/475-1651)

4.3 THE PROVINCIAL (ONTARIO) ASSOCIATION OF COMMITTEES OF ADJUSTMENT AND LAND DIVISION COMMITTEES

This is an organization established by Committees of Adjustment and Land Division Committees to enable mutual contact and benefit among committee members. The Association publishes a quarterly newsletter, containing information of interest to committee members.

Inquiries should be addressed to:

The Secretary
Provincial (Ontario) Association
of Committees of Adjustment
and Land Division Committees,
104-460 Mayfair Avenue,
Oshawa, Ontario.
L1G 2Y2.

APPENDICES

MINOR VARIANCES AND NON-CONFORMING USES - COMMITTEE OF ADJUSTMENT GUIDELINES

Form 1

Appendix I
Application Form

The Planning Act

APPLICATION FOR MINOR VARIANCE OR FOR PERMISSION

The undersigned hereby applies to the Committee of Adjustment for the ..... under subsection 1 or 2
(name of municipality)
of section 42 of The Planning Act for relief, as described in this application, from By-law No.....(as amended).

1. Name of Owner.....Tel. No.....

2. Address.....

3. Name of Agent (if any).....Tel. No.....

4. Address.....

NOTE: Unless otherwise requested all communications will be sent to the agent, if any.

5. Names and addresses of any mortgagees, holders of charges or other encumbrancers:

.....

.....

.....

.....

6. Nature and extent of relief applied for:

.....

.....

.....

.....

7. Why is it not possible to comply with the provisions of the by-law?

.....

.....

.....

.....

8. Legal description of subject lands (registered plan number and lot number or other legal description and, where applicable, street and street number:

.....

.....

.....

.....

9. The applicant shall attach to each copy of this application a plan showing the dimensions of the subject lands and of all abutting lands and showing the location, size and type of all buildings and structures on the subject and abutting lands, and where required by the Committee of Adjustment such plan shall be signed by an Ontario land surveyor.

10. Dimensions of lands affected:

Frontage .....

Depth .....

Area .....

Width of street .....

11. Particulars of all buildings and structures on or proposed for the subject lands: (Specify ground floor area, gross floor area, number of storeys, width, length, height, etc.)

Existing:

.....

.....

.....

.....

Proposed:

.....

.....

.....

.....

12. Location of all buildings and structures on or proposed for the subject lands: (Specify distance from side, rear and front lot lines.)

Existing:

.....

.....

.....

.....

Proposed:

.....

.....

.....

.....

13. Date of acquisition of subject lands:

.....

14. Date of construction of all buildings and structures on subject lands:

.....

15. Existing uses of the subject property:

.....

.....

.....

.....

16. Existing uses of abutting properties:

.....

.....

.....

.....

17. Length of time the existing uses of the subject property have continued:

.....

.....

.....

.....

18. Municipal services available: (Check appropriate space or spaces)

Water ..... Connected .....

Sanitary Sewers ..... Connected .....

Storm Sewers .....

19. Present Official Plan provisions applying to the land:

.....

.....

.....

.....

20. Present Restricted Area By-law (Zoning By-law) provisions applying to the land:

.....

.....

.....

.....

21. Has the owner previously applied for relief on the parcel of land of which this application is subject:

Yes No

If the answer is yes, describe briefly

.....

.....

.....

.....

22. Is the parcel of land, subject of this application, part of an application for a plan of subdivision under section 33 of The Planning Act?.....

23. Is the parcel of land, subject of this application, part of an application for consent under section 29 of The Planning Act?.....

.....

Signature of applicant or authorized agent.

Dated at .....this .....day of.....19...

NOTE: It is required that.....copies of this application be filed with the Secretary-Treasurer of the Committee of Adjustment and be accompanied by a fee of $..... in cash or by cheque made payable to the Treasurer of the .....

(name of municipality)

I,.....of the.....of

.....in the.....of.....

solemnly declare that:

All of the above statements are true, and I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

Declared before me at the)
)
.....of.....)
)
in.....of.....)
)
this.....day of)

.....,AD 19..

.....

A Commissioner, etc.

Appendix II

Sample Application Index

Record of Minor Variance Applications

APPLICANT's NAME	"A" NO	DATE OF DECISION	GRANTED	REFUSED	APPEALED	COMMENTS

Appendix III
Summary Sheet

SUMMARY SHEET - MINOR VARIANCES

1. a. Committee file no. .....
   b. Committee submission no. .....
   c. Hearing date .....
   d. Date of receipt of completed application .....
   e. Checked by .....
   f. Zoning by-law no. .....Sections.....
      Zone .....
   g. Official Plan designation .....
   h. Site visit carried out:
      Yes ☐ No ☐
   i. Consent needed:
      Yes ☐ No ☐
   j. Authorization of owner received (if required) ☐

2. Date notice of hearing sent to those parties under sections 5, 6, 7 and 9 of the Rules of Procedure

3. Date notice of decision sent, where applicable, to the senior planning officer of the District, Regional or Metropolitan Municipality under section 13 of the Rules of Procedure

4. Type of relief applied for (check one)

Side yard	☐	Change of building size	☐
Rear Yard	☐	Change of building details	☐
Non-conforming	☐	External design change	☐
Lot width	☐	Signs	☐
Lot area	☐	Home occupations	☐
Lot depth	☐	Change of accessory use	☐
Lot coverage	☐	Other (specify)	
Floor Area Ratio	☐		
Parking	☐		
Height	☐		
Set back	☐		
Zone extension	☐		

Appendix IV
Sample Decision

TOWNSHIP OF _____

Committee of Adjustment Decision

Submission No. _____

Date of Hearing _____

Date of Decision _____

In the matter of Section 42 of The Planning Act; Zoning By-law No. _____ and an application for ☐ minor variance ☐ special permission to allow _____

_____

_____

Location of the property: Lot _____ Con. _____

The request is hereby ☐ refused or ☐ granted subject to the following conditions.

1. _____
2. _____
3. _____
4. _____

Reasons:

Concur in the Decision:

_____ Committee Member

_____ Committee Member

_____ Committee Member

_____ Committee Member

NOTICE OF LAST DATE OF APPEAL

Notice is hereby given that the last date for appealing this decision to the Ontario Municipal Board is _____

Appendix V

O.M.B. Appeal
requirements.

ONTARIO
MUNICIPAL
BOARD

180 Dundas Street West
Toronto, Ontario
M5G 1C6

To all Secretary-Treasurers
of Committees of Adjustment
and Land Division

Dear Sir/Madam:

Re: Procedure on Appeals from decisions of Committees of Adjustment or Land Division Committees.

The enclosed Rules of Procedure on appeals from decisions of Committees of Adjustment or Land Division Committees supersedes those rules submitted under cover of our letter of May 14, 1975, and take effect from August 1, 1975.

These revised rules are in line with the Rules of Procedure issued by the Minister of Housing on May 1, 1975.

Yours truly,

"K.C. Andrews"

K.C. Andrews
Secretary

Reference - Section 42(13), (13a)-
The Planning Act.

In accordance with the requirements of the above, the Secretary-Treasurer, on receipt of appeal, shall forward forthwith the following to the Secretary of the Ontario Municipal Board.

N.B. All documents are to be originals, or certified copies.

1. Notice of Appeal.

2. Board's fee in the amount of $25.00 for each separate appeal. Cheques or money orders are to be made payable to the Treasurer of Ontario).

3. Application(s) for consent or variance.
(Note: To include portion described "For Office Use Only").

4. The authorization in writing from the owner of the property if the application for consent or variance has been made by someone other than the owner.

5. All maps or sketches that were before the Committee on the hearing of the application which show the land, building or structure that was the subject matter of the application.

6. Names and addresses of -

   (1) all persons, officials or agencies who appeared at the committee hearing;
   (2) all legal counsel representing persons or agencies at the committee hearing;
   (3) all persons, officials or agencies who made written submissions to the committee;
   (4) all persons, officials or agencies requesting notice of the committee decision.

7. The decision of the committee with reasons given.

8. Last date on which appeal could be taken against decision of the last committee.

9. Date on which notice of appeal to the Ontario Municipal Board was received by the Secretary-Treasurer if delivered in person, or date posted, if sent by registered mail.

10. A copy of, or relevant extracts from any official plan, restricted area (zoning) by-law and any interim land severance policy statements enacted by a local or regional or county municipality that may affect the use of the parcel to be conveyed or to the remaining parcel. Indicate the status of such documents with the date(s) of approval by the municipality, the Minister or the Ontario Municipal Board.

11. Copy of any Ministerial order that may affect the use of the parcel to be conveyed or to the remaining parcel.

12. Sworn declaration of the Secretary-Treasurer that he has complied with the requirements of section 42(11) of The Planning Act.

NOTE: The Board requests that a certified copy of all relevant official plans, zoning by-laws and Ministerial orders and interim land severance policy statements be available at the Board hearing on every appeal.

Designed and produced by
Communications Branch

1.5M/1-77/PW-42